



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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March 2, 2006

Mr. J. Robert Hume, III, Chief
Regulatory Branch
Norfolk District Army Corps of Engineers
803 Front Street
Norfolk, Virginia 23510-1096

RE: Final DEQ Position on Section 401 Certification of Regional Permit 05 for Construction of Small Impoundments

Dear Mr. Hume:

We have reviewed the Norfolk District's January 20, 2006 publication of Regional Permit 05 (RP-05) for the construction of small impoundments. At this time, the Virginia Department of Environmental Quality (DEQ) does not intend to issue a blanket or conditional 401 Certification for RP-05. Overall, we are concerned with the scope of impacts covered under the proposed RP-05 as well as the confusion that may result with similar impacts covered under the SPGP-01. Some activities covered by this permit are already excluded from our regulations and many other activities with smaller impacts are covered by our reporting only provisions of our General Permits.

As further explanation, we reiterate some of our comments from our June 24, 2005 letter on the draft RP-05 that are relevant to our decision to require individual Section 401 certification via a VWP permit for projects receiving the RP-05:

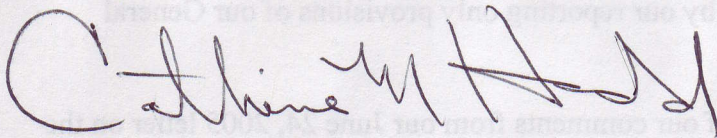
- The proposed RP-05 covers more than farm ponds, and DEQ wishes to retain our review authority for these activities.
- DEQ's regulations have significantly more compensation requirements than are expressed in the proposed regional permit (i.e., compensation type sequence, alternatives analysis, mitigation monitoring, mandatory 2:1 mitigation under WP-1).

- DEQ's regulations contain several other requirements and conditions that we feel are important to retain under our review authority i.e., construction monitoring and reporting, as would be additional impacts that may occur during construction, which we typically capture in the form of a permit modification.
- All activities covered by the VWPP regulations provide a protective mechanism for state listed threatened and endangered species. RP-05 does not provide for state listed species. Currently, DEQ provides a screening check for all proposed permitted activities including the reporting only activities. We would like to maintain this level of protection afforded by the current reporting mechanism.
- DEQ is currently in the process of developing a VWPP general permit regulation for minor water withdrawals. This new general permit will decrease the regulatory burden of applying for an individual permit for small withdrawals, but will ensure adequate environmental protection. RP-05 does not establish any limitations on withdrawals from impounding structures.
- Currently, the Corps has little involvement with smaller projects falling under the SPGP-01. It appears from the language of the RP-05 that the Corps would become more involved in the review of these smaller project impacts, where DEQ currently has the primary review role. We feel that this would be duplicative and counter to the intent of the SPGP-01 division of labor concept and may cause confusion as to which small projects would or wouldn't be reviewed by the respective agencies.

For all of the reasons stated above, the Department feels that it would cause less confusion for the regulated community to simply require the standard VWPP/401 coverage through DEQ's general or individual permitting process. Parsing out a small subset of activities would only serve to confuse applicants and we see no advantages to doing so.

Again, thank you for the opportunity to provide comments on the Corps' proposal.

Sincerely,



Catherine M. Harold, PWS, Manager
Office of Wetlands and Water Protection